

**STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON**

ORDINANCE No. 2018-004

AN ORDINANCE TO CREATE TITLE 15, Chapter 6, OF THE CITY OF SOUTH FULTON CODE OF ORDINANCES, OFFENSES; TO ESTABLISH OFFENSES RELATED TO CRIMINAL STREET GANGS; TO PROVIDE FOR AUTHORITY TO COMBAT THE GROWTH AND ACTIVITY OF CRIMINAL STREET GANGS; AND FOR OTHER PURPOSES.

(Sponsored by Councilmember Jackson)

WHEREAS, the City of South Fulton ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

WHEREAS, pursuant to City Charter Section 1.12(b)(13) and 3.10(b), the City is authorized to regulate or prohibit any act, practice, or conduct it deems necessary, expedient, or helpful for the peace, good order, well-being, and safety of the inhabitants of the City and to provide for the enforcement of such standards; and

WHEREAS, pursuant to City Charter Section 1.12(b)(25) and Section 3.10(b), the City is authorized to establish penalties for violation of any such ordinance; and

WHEREAS, Georgia Code Section 16-15-6 permits local governments to adopt and enforce local ordinances related to gangs and gang violence which are consistent with Georgia law; and

WHEREAS, the Mayor and City Council find and declare that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals; and

WHEREAS, it is not the intent by enacting this ordinance to interfere with the exercise of the constitutionally protected rights of freedom of expression and association; and

WHEREAS, the Mayor and City Council recognize the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process; and

WHEREAS, the Mayor and City Council, however, further find that the City of South Fulton can be adversely affected by criminal street gangs whose members threaten, terrorize, and commit crimes against the peaceful citizens of their neighborhoods; and

WHEREAS, these activities, both individually and collectively, present a clear and present danger to public order and safety, and such actions are not constitutionally protected; and

WHEREAS, the Mayor and City Council find that there are criminal street gangs operating in the City of South Fulton; and

WHEREAS, it is the intent of the Mayor and City Council in enacting this ordinance to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs; and

WHEREAS, the Mayor and City Council further find that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

THE COUNCIL OF THE CITY OF SOUTH FULTON HEREBY ORDAINS as follows:

Section 1: The City of South Fulton Code of Ordinances, Title 15, Offenses, is hereby established, which shall include the following language:

Title 15: Offenses

Section 2: Chapter 6 of Title 15 of the City of South Fulton Code of Ordinances is hereby established, which shall include the following language:

Chapter 6: Criminal Street Gang and Terrorism Prevention

Sec. 15-6001. - Short title.

This code section shall be known and may be cited as the "City of South Fulton Street Gang Terrorism and Prevention Ordinance."

Sec. 15-6002. - Legislative intent.

- (a) The Mayor and City Council find and declare that it is the right of every person to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups and individuals. It is not the intent of this chapter to interfere with the exercise of the constitutionally protected rights of freedom of expression and association. The Mayor and City Council recognize the constitutional right of every citizen to harbor and express beliefs on any lawful subject whatsoever, to associate

lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

- (b) The Mayor and City Council, however, further find that the City of South Fulton can be adversely affected by criminal street gangs whose members threaten, terrorize, and commit crimes against the peaceful citizens of their neighborhoods. These activities, both individually and collectively, present a clear and present danger to public order and safety. Such actions are not constitutionally protected.
- (c) The Mayor and City Council find that there are criminal street gangs operating in the City of South Fulton. It is the intent of the Mayor and City Council in enacting this code section to seek the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the organized nature of street gangs which together are the chief source of terror created by street gangs.
- (d) The Mayor and City Council further find that an effective means of punishing and deterring the criminal activities of street gangs is through forfeiture of the profits, proceeds, and instrumentalities acquired, accumulated, or used by street gangs.

Sec. 15-6003. - Definitions.

The following words, terms and phrases, when used in this code section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Criminal gang activity* means the commission, attempted commission, conspiracy to commit, or solicitation, coercion, or intimidation of another person to commit any of the following offenses on or after March 1, 2018:
 - (1) Any offense defined as racketeering activity by O.C.G.A. § 16-14-3;
 - (2) Any offense defined in O.C.G.A. § 16-5-90 et seq., relating to stalking;
 - (3) Any offense defined in O.C.G.A. § 16-6-1 (as rape), O.C.G.A. § 16-6-2 (as aggravated sodomy), O.C.G.A. § 16-6-3 (as statutory rape), or O.C.G.A. § 16-6-22.2 as aggravated sexual battery;
 - (4) Any offense defined in O.C.G.A. § 16-10-50 et seq., relating to escape and other offenses related to confinement;
 - (5) Any offense defined in O.C.G.A. § 16-11-100 et seq., relating to dangerous instrumentalities and practices;
 - (6) Any offense defined in O.C.G.A. §§ 42-5-15, 42-5-16, 42-5-17, 42-5-18, or 42-5-19, relating to the security of state or county correctional facilities;

- (7) Any offense defined in O.C.G.A. § 49-4A-11, relating to aiding or encouraging a child to escape from custody;
 - (8) Any offense of criminal trespass or criminal damage to property resulting from any act of gang related painting on, tagging, marking on, writing on, or creating any form of graffiti on the property of another;
 - (9) Any criminal offense committed in violation of the laws of the United States or its territories, dominions, or possessions, any of the several states, or any foreign nation which, if committed in this state, would be considered criminal gang activity under this section; and
 - (10) Any criminal offense in the state, any other state, or the United States that involves violence, possession of a weapon, or use of a weapon, whether designated as a felony or not, and regardless of the maximum sentence that could be imposed or actually was imposed.
- (b) *Criminal street gang* means any organization, association, or group of three or more persons associated in fact, whether formal or informal, which engages in criminal gang activity as defined in this section. The existence of such organization, association, or group of individuals associated in fact may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, or attire or other distinguishing characteristics. Such term shall not include three or more persons, associated in fact, whether formal or informal, who are not engaged in criminal gang activity.

Sec. 15-6004. - Unlawful acts; penalties.

- (a) It shall be unlawful for any person employed by or associated with a criminal street gang to conduct or participate in criminal street gang activity through the commission of any offense enumerated in the definition of "criminal gang activity" in section 15-6003.
- (b) It shall be unlawful for any person employed by or associated with a criminal street gang to commit any offense enumerated in section 15-6003 with knowledge that members of such criminal street gang have committed one or more of such offenses.
- (c) It shall be unlawful for any person to commit any offense enumerated in section 15-6003 with the intent to maintain or increase his status or position in a criminal street gang.
- (d) It shall be unlawful for any person to acquire or maintain, directly or indirectly, through criminal gang activity or proceeds derived therefrom any interest in or control of any real or personal property of any nature, including money.

- (e) It shall be unlawful for any person who occupies a position of organizer, supervisory position, or any other position of management with regard to a criminal street gang to engage in, directly or indirectly, or conspire to engage in criminal gang activity.
- (f) It shall be unlawful for any person to cause, encourage, solicit, or coerce another to participate in a criminal street gang.
- (g) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to deter such person from assisting a member or associate of a criminal street gang to withdraw from such criminal street gang.
- (h) It shall be unlawful for any person to communicate, directly or indirectly, with another any threat of injury or damage to the person or property of the other person or to any associate or relative of the other person with the intent to punish or retaliate against such person for having withdrawn from a criminal street gang.
- (i) Any person who violates subsection (a), (b), (c), or (d) of this section shall, in addition to any other penalty imposed by law, be punished by a fine not exceeding \$1,000.00, imprisonment for a term not exceeding 30 days, or by any combination thereof.
- (j) Any crime committed in violation of this section shall be considered a separate offense.

Sec. 15-6005. - Forfeiture of contraband property.

- (a) The following are declared to be contraband and no person shall have a property interest in them:
 - (1) All property which is directly or indirectly used or intended for use in any manner to facilitate a violation of this code section; and
 - (2) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this code section.
- (b) The Chief of Police or his or her designee may take the necessary steps to initiate forfeiture proceedings as allowed by law.

Sec. 15-6006. - Criminal gang activity; nuisance, abatement, cause of action.

- (a) Any real property which is erected, established, maintained, owned, leased, or used by any criminal street gang for the purpose of conducting criminal gang activity shall

constitute a public nuisance and may be abated as provided by O.C.G.A. § 41-1-1 *et seq.*, relating to nuisances.

- (b) An action to abate a nuisance pursuant to this code section may be brought by the prosecuting attorney of a municipal court in any superior, state, or municipal court.

Sec. 15-6007. - Reserved.

Sec. 15-6008. - Reserved.

Sec. 15-6009. - Reserved.

Section 3: Severability. In the event any portion of this ordinance shall be declared or adjudged invalid or unconstitutional, it is the intention of the City Council of the City of South Fulton, Georgia, that such adjudication shall in no manner affect the other sections, sentences, clauses or phrases of this ordinance which shall remain in full force and effect, as if the invalid or unconstitutional section, sentence, clause or phrase were not originally a part of the ordinance.

Section 4: Repealer. All ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

Section 5: Effective Date. Unless specifically specified elsewhere in this Ordinance, the effective date of this Ordinance shall be March 1, 2018.

The foregoing Ordinance No. **2018-004** was adopted on **February 13, 2018** was offered by Councilwoman **Rowell**, who moved its approval. The motion was seconded by Councilmember **Mayor Pro Tem Baker**, and being put to a vote, the result was as follows:

“SECOND READING”

	AYE	NAY
William “Bill” Edwards, Mayor	<hr/>	<hr/>
Mark Baker, Mayor Pro Tem	<hr/> √	<hr/>
Catherine Foster Rowell, Mayor Pro Tem	<hr/> √	<hr/>
Carmalitha Lizandra Gumbs	<hr/> √	<hr/>
Helen Zenobia Willis	<hr/> √	<hr/>
Gertrude Naeema Gilyard	<hr/> √	<hr/>
Rosie Jackson	<hr/> √	<hr/>
khalid kamau	<hr/> √	<hr/>

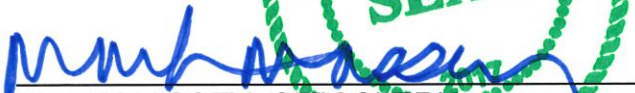
THIS RESOLUTION adopted this 13th day of February 2018. CITY OF SOUTH FULTON, GEORGIA

"SECOND READING"



WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:



MARK MASSEY, CITY CLERK

Item#: 2018-004 Date: 2/13/2018

APPROVED AS TO FORM:



JOSH BELINFANTE, INTERIM CITY ATTORNEY